Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

CITY OF PINEVILLE, PETITIONER

v.

LIBERTY MUTUAL INSURANCE COMPANY, DENNIS STEPHENSON, TERRY M. CROY, GERALD ALAN CROY, KATHY STANLEY, TWYLA TANNER, BRIAN CROY AND CHRISTOPHER SIMS.

PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF LOUISIANA COURT OF APPEAL, THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

RANDALL B. KEISER
KEISER LAW FIRM LLC
P.O. BOX 12358
ALEXANDRIA, LA
(318) 443-6168

STACY C. AUZENNE
Counsel of Record
AUZENNE LAW FIRM, L.L.C.
P.O. BOX 11817
ALEXANDRIA, LA 71315-1817
(318) 880-0087

Attorneys for the Petitioner

CURRY & TAYLOR ♦ WASH D.C. ♦ (202) 223-3160 ♦ USSCINFO.COM

QUESTIONS PRESENTED FOR REVIEW

1. Did the District Court, the Court of Appeal and the Louisiana Supreme Court err in their decisions to allow a suit to go forward after the City of Pineville was made a defendant nearly three (3) years after the motor vehicle accident occurred, when the father of one of the plaintiffs testified that he observed an alleged dangerous condition in the roadway the day after the accident occurred?

   (a) Was the City of Pineville provided meaningful notice of a claim against them nearly three years after the accident occurred, and after the City entered into an intergovernmental agreement to overlay the road with asphalt prior to suit being filed against the City?

   (b) Were the City of Pineville's due process rights violated when they were not provided a meaningful opportunity to be heard in a reasonable amount of time after plaintiffs failed to name them as a defendant until nearly 3 years after the accident occurred, and one of the plaintiffs settled his claims against one of the originally named defendants?

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS 1

STATEMENT 2

REASONS FOR GRANTING THE PETITION 19

CONCLUSION 28

APPENDIX

Court of Appeal Decision (3/2/2005) 1a
Reasons for Judgment (5/6/2003) 30a
Order Denying Rehearing (5/13/05) 40a
Excerpts 41a

TABLE OF AUTHORITIES

CASES

ARMSTRONG v. MANZO, 380 U.S. 545, 85 S.CT. 1187, 1191, 14 L.ED.2D 62 (1965) 19, 22

BOARD OF REGENTS v. ROTH, 408 U.S. 564, 577, 92 S.CT. 2701, 2709, 33 L.ED.2D 548 (1972) 20

DANIELS v. WILLIAMS, 474 U.S. 327, 106 S.CT. 662, 88 L.ED.2D 662 (1986) 20

GRANNIS v. ORDEAN, 234 U.S. 385, 394, 34 S.CT. 779, 783 (1914) 19

KAMMERER v. SEWAGE & WATER BOARD OF NEW ORLEANS, 633 SO.2D 1357 (LA. APP. 4 CIR. 1994) 21

LEE v. STATE DOTD, 97-0350 (LA. 10/21/97) 701 SO.2D 676 . 28

MEMPHIS LIGHT, GAS & WATER DIVISION v. CRAFT, 436 U.S. 1, 98 S.CT. 1554, 56 L.ED.2D 30 (1978) 19

PARRATT v. TAYLOR, 451 U.S. 527, 544, 101 S.CT. 1908, 1917, 68 L.ED.2D 420 (1981) 20

PAUL v. DAVIS, 424 U.S. 693, 701, 96 S.CT. 1155, 1160, 47 L.ED.2D 405 (1976) 20

PERALTA v. HEIGHTS MEDICAL CENTER, INC., 485 U.S. 80, 108 S.CT. 896, 99 L.ED.2D 75 (1988) 20

PERRY v. SINDERMANN, 408 U.S. 593, 602, 92 S.CT. 2694, 2700, 33 L.ED.2D 570 (1972) 20

PIERCE v. FAUCETT, 01-36 (LA. APP. 5 CIR. 5/30/01) 798 SO.2D 155 28

STATE V. TAYLOR, 688 SO.2D 1262, 1270-71 (LA. APP. 3 CIR. 1997) 28

TASSIN V. STATE FARM, 96-754 (LA. APP. 3 CIR. 3/5/97) 692 SO.2D 604 8

WILLIAMS V. GENERAL MOTORS CORP., 607 SO.2D 695 (LA. APP. 4 CIR. 1992) 25

STATUTES

28 U.S.C. SECTION 1254(1) 1

LA. R.S. 13:5105 4

LA. R.S. 13:5112 4

LA. R.S. 13:5114 4

LA. R.S. 9:2798.1 4

LA. R.S. 9:2800 ..... 25, 27, 28

CONSTITUTIONAL PROVISIONS

U.S. CONST. ART XIV 21

LA. CONST. ART. 1 SEC. 22 21

OPINIONS BELOW

The Reasons for Judgment of the 9th Judicial District Court rendered on May 6, 2003, is reprinted at App. p. 30a-39a. The decision of the Louisiana Third Circuit Court of Appeal affirming the trial court was rendered on March 2, 2005, is reprinted at App. p. 1a-29a, and is reported at 897 So.2d 834. The May 13, 2005, writ denial by the Louisiana Supreme Court of the City of Pineville's writ application is reprinted at App. p. 40a, and reported at 902 So.2d 1030.

JURISDICTION

The Louisiana Supreme Court denied the City of Pineville's writ application on May 13, 2005. This Petition for Writ of Certiorari is timely because petitioner has filed it within 90 days of May 13, 2005. The Court has jurisdiction pursuant to 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS

Amendment XIV of the United States Constitution:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public

use, without just compensation.

STATEMENT

MAY IT PLEASE THE COURT:

This case involves a suit filed by Plaintiffs, the widow of deceased driver Wayne Croy, Terry M. Croy (hereinafter "Terry"); the children of Wayne Croy, Gerald Alan Croy (hereinafter "Gerald"), Kathy Stanley (hereinafter "Kathy"), Twyla Tanner (hereinafter "Twyla") and Brian Croy (hereinafter "Brian") collectively known as the Croy children; and the guest passenger of Croy's vehicle, Christopher Sims (hereinafter "Sims"). Named as defendants by the plaintiffs were the City of Pineville (hereinafter "City"), custodian of Bragg Street on the date of the accident, July 18, 1994; Dennis Stephenson (hereinafter "Stephenson"), the driver of the 1994 Ford Taurus that ran head on into the Croy vehicle; Hixson-Hopkins Autoplex of Alexandria, Inc. (hereinafter "Hixson"), the lessor of the 1994 Taurus; Connie and Patsy Lewis (hereinafter "Lewis"), the lessees of the 1994 Taurus; and Liberty Mutual Insurance Company (hereinafter "Liberty"), the insurer of the 1994 Taurus.

The Croy children first filed suit on September 21, 1994, naming Stephenson, Liberty, and an unknown insurer as defendants. The Croy children alleged that the sole cause of their father's death was Stephenson's negligent driving, excessive speed, inattentiveness and failure to maintain proper control of the 1994 Taurus. (Civil Suit 177,831 "F" R. p. 12-15) Sims filed suit on September 21, 1994, naming Stephenson and Liberty as defendants, and alleging that the sole cause of the accident was Stephenson's negligent driving, excessive speed, failure to maintain control of the vehicle, and

failure to take evasive action to avoid the accident. (Civil Suit 177,821 "B" R. p. 12-14)

Suit was initially filed by Terry on December 12, 1994, naming Liberty, Stephenson, Hixson, and the Lewis's as defendants. Terry's claims involved the damages she suffered when Wayne Croy was killed after running head on into Stephenson on Bragg Street in Pineville, Louisiana. The excessive speed and negligent driving of Stephenson were cited as the sole causes of the accident. (Civil Suit 178,614 "B" R. p. 12-17) The three separate suits were consolidated by Order dated January 30, 1995. (Civil Suit 177,821 R. p. 18-21)

On March 17, 1997, Sims filed a "First Supplemental and Amending Petition" adding defendants Stephenson and the City, alleging defects in Bragg Street, including its curve, alleged excessive speed of travelers over the posted 25 mile per hour speed limit, absence of shoulders, pavement drop off, overgrown vegetation over the street which concealed the approaching curve, and absence of warning or curve signs, all of which rendered it unreasonably dangerous. (Sims R. p. 117-122) The Croy children made similar allegations in an amended petition filed May 6, 1997, and Terry followed suit on July 23, 1997. (Croy Children R. p. 44-51 & Terry R. p. 59-66)

Sims alleged personal injury damages, medical special damages, lost wages and loss of earning capacity. (Sims R. p. 12-14) Terry alleged damages of loss of consortium, loss of love and affection and companionship, loss of services and support and future support, along with funeral and medical expenses. (Terry R. p. 12-17) The Croy children alleged wrongful death and survival damages, mental anguish and medical and funeral expenses. (Croy Children R. p. 12-15)

Sims settled for $10,000.00 with Liberty and Hixson on March 14, 1997, reserving rights to pursue his claims against the other defendants, and Liberty and Hixson were dismissed as to Sims only on April 29, 1997. (Sims R. p. 139-140)

The City filed an Exception of Prescription in all three consolidated cases on April 28, 1997, which was denied July 18, 1997, by the trial court (Sims R. p. 123-138 & p. 180-181) A writ was taken to the Third Circuit Court of Appeal, which was denied on September 12, 1997, and a writ to the Louisiana Supreme Court was likewise denied. (Sims R. p. 182-189, 202 & 203)

The City answered the original and amending and supplemental petitions of the plaintiffs, alleging that the sole causes of the plaintiffs' damages were the negligent acts of third persons, namely Stephenson, when he traveled on Bragg Street at speeds approaching sixty (60) miles per hour, and ran into Wayne Croy. (Sims R. p. 204-220) The City also alleged the statutory protections of the limitations on damages of La. R. S. 12:5106, the prohibition of jury trial of La. R.S. 13:5105, the limitation on legal interest of La. R.S. 13:5112, the limitations of liability on public bodies of La. R.S. 9:2798.1 and 9:2800, and the right to have the judgment structured according to La. R.S. 13:5114. (Sims R. p. 204-220)

Three separate motions for summary judgment were filed by Liberty, seeking to deny insurance coverage for Stephenson, and alternatively to declare the maximum coverage amount as being $10,000/$20,000. (Sims R. p. 35-41, 67-77, & 226-242) All three of Liberty's motions for summary judgment were denied. (Sims R. p. 65-66, 102-103 & 455)

The City attempted to obtain the Alexandria Police Department arrest jackets and Huey P. Long Hospital medical records of Kathy Stanley, which was

denied by the Trial Court. (Sims R. Vol. 2 p. 354-386) The City attempted to strike from paragraph 10 of the Croy children's Petition for Damages any claim for "hedonic damages", which was denied by the Trial Court. (Sims R. Vol. 2 p. 387-398)

Numerous motions to compel discovery and for protective orders were filed by all parties to this litigation. Supervisory writ applications were taken to the Court of Appeal, and the Louisiana Supreme Court. The City's attempt to third party the Rapides Parish Police Jury, (which deeded away Bragg Street to the City on April 7, 1953, by Ordinance Number 449) was dismissed by the Trial Court on the Police Jury's exception. (R. Vol. 3 p. 534-540, 554-555, 580, 588) The City also sought a protective order from the Court to prevent plaintiffs' counsel from conversing with current and former City employees, outside of the presence of undersigned counsel, which was denied.

The City filed a Daubert Motion to exclude the testimony of plaintiffs' accident reconstruction expert, Duaine Evans, which was denied. (R. Vol. 3 p. 622-630 700-702) The City also filed an Exception of Res Judicata, alleging that Sims had compromised his claims against them when he settled with Stephenson, which was denied. This matter was tried as a bench trial for all parties when Liberty failed to post its jury bond according to law, on December 3 through 6, 2002.

The Trial Court rendered written "Reasons for Judgment" on May 6, 2003, finding the City 50% liable and Dennis Stephenson 50% liable for the plaintiffs' damages, and awarded damages as follows:

Christopher Sims	Past Medicals	$32,018.43
	Future	

	Medicals	$ 75,000.00
	General Damages	$650,000.00
Croy Children:	Wrongful Death Damages	$40,000.00 each to Kathy Stanley Gerald Alan Croy and Twyla Tanner
	Total:	$120,000.00
Brian Croy	Wrongful Death Damages	$125,000.00
Terry Croy	Wrongful Death Damages	$125,000.00
Terry Croy	Pain & Suffering Wayne Croy	$100,000.00
Terry Croy	Economic Loss (Past & Future Lost Wages)	$156,494.00
Terry Croy	Property Damage	$100.00
Terry Croy	Special Damages (Funeral Expense)	$3,894.35
Total Damages:		1,387,506.78

City of Pineville (50% Fault)	$693,753.39
Dennis Stephenson (50% Fault)	$693,753.39
Liberty Mutual Insurance Company	$10,000.00
Coverage Settlement by Liberty with Christopher Sims	$10,000.00

(Sims R. Vol. 4 p. 854-859 & App. p. 30a-39a)

On March 2, 2005, the Louisiana Third Circuit Court of Appeal affirmed the Trial Court's decision, and reapportioned court costs to be paid 50% by the City of Pineville, and 50% by Liberty Mutual Insurance Company. (App. p. 1a-29a) Liberty requested rehearing on the apportionment of court cost issue, which was denied on April 20, 2005. The Croy children requested rehearing on the issues of the amounts of Liberty Mutual insurance coverage, apportionment of survival action damages amongst the children, and requested an increase in their damage award, which was denied on April 20, 2005. The City's writ application to the Louisiana Supreme Court was denied on May 13, 2005. (App. p. 40a) Still pending before the Louisiana Supreme Court are the Croy children's request for reversal of the trial court's